



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO PERKINSON CONSTRUCTION LLC FOR BUREN PROPERTY

Virginia Pollutant Discharge Elimination System Permit No. VAR105202

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Perkinson Construction LLC regarding the Buren Property, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of

total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Perkinson" means Perkinson Construction LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Perkinson is a "person" within the meaning of Va. Code § 62.1-44.3.
7. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
8. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
9. "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "PRO" means the Piedmont Regional Office of DEQ, located in Richmond, Virginia.
12. "Site" means the Buren Property, located in Prince George, Virginia, and owned by Prince George County, from which discharges of stormwater associated with construction activity occur.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
14. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-870-10.
15. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
16. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater

discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.

17. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.
21. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
22. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
23. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. Perkinson is the operator of the Site, from which stormwater associated with construction activity is discharged.
2. DEQ is the VSMP authority for Prince George County, Virginia.
3. On October 31, 2014, DEQ granted coverage to Perkinson under the 2014 Permit. DEQ assigned Perkinson registration number VAR105202.

4. The 2014 Permit allows Perkinson to discharge stormwater associated with construction activities from the Site to surface waters within the Commonwealth, in strict compliance with the terms and conditions of the 2014 Permit.
5. Stormwater from construction activities at the Site is discharged to tributaries of Blackwater Swamp, which is a surface water located wholly within the Commonwealth and is a state water under the State Water Control Law.
6. From May 2015 to September 2015, Perkinson, under contract with Prince George County, engaged in land disturbing activities for the purposes of constructed ball fields and other recreational improvements on part of the Site. Perkinson asserts the contracted work was separated into two phases. Perkinson completed Phase I of the contracted work in September 2015, but the County did not fund Phase II of the work. As a result, in September 2015, construction activity stopped and Perkinson demobilized from the Site. However, Perkinson asserts that by agreement between Perkinson and the County at the time, the County was to maintain the Site while the funding for Phase II of the contracted work was pending.
7. There is one ESC plan for the Site, and the construction stormwater permit does not have phases. While the construction activity was stopped at the Site, Perkinson remained the permittee for the Site and, as such, remained responsible under the 2014 Permit.
8. Phase II of the work was not funded until November 27, 2016 and was awarded to Perkinson under a separate contract. As a result, no construction activity by Perkinson occurred at the Site between September 2015 and November 27, 2016.
9. On July 30, 2015, August 28, 2015, September 16, 2015, and October 28, 2015, DEQ staff conducted inspections and a file review of the Site. During the inspections, DEQ staff observed unstabilized areas, erosion and sediment control deficiencies, and missing SWPPP inspections, but discharges of sediment to state waters were not observed.
10. In or about late October through early November 2015, a third party landscape contractor hired by the County performed site stabilization (seeding and mulching) for the denuded areas at the Site that were to be further developed in connection with the Phase II portion of the contracted work.
11. On November 3, 2015, a warning letter was issued to Perkinson to address the observations described above.
12. Given the indefinite suspension in construction work pending funding for Phase II of the work at the Site, and to coordinate erosion and sediment control responsibilities during the interim period, on November 3, 2015, Perkinson requested a meeting with County and DEQ personnel to address these issues. That meeting occurred at the Site on November 20, 2015. During the meeting, and throughout this process, DEQ's response has been that Perkinson remained the permittee/operator for the Site and, therefore, was

responsible for compliance with the permit terms and conditions, regardless of any contractual obligations of third parties.

13. On November 19, 2015, and despite there being no further funding for the Site construction activities under the contract, Perkinson inspected the Site and found all silt fences and other controls to be in sound working condition. Perkinson found no evidence of sedimentation entering the drainage system or significant impacts to discharge points.
14. In follow up to the meeting on November 20, 2015, Perkinson sought to have the 2014 Permit transferred to the County, but the County never accepted transfer of the 2014 Permit. Therefore, Perkinson remained responsible for compliance with the permit terms and conditions.
15. On December 11, 2015, DEQ staff inspected the Site and noted that temporary stabilization had been achieved on over 95% of the Site, Perkinson had fixed the erosion and sediment control deficiencies, and Perkinson was conducting SWPPP inspections at the required frequency.
16. Perkinson Site inspection records demonstrate that its personnel inspected the Site and performed the following corrective actions on the following dates, though, in each instance, Perkinson found no evidence of sedimentation entering the drainage system or significant impacts to discharge points:
 - a. On November 25, 2015 – inspected and found all silt fences and other controls to be in sound working condition;
 - b. On December 10, 2015 – inspected and found all silt fences and other controls to be in sound working condition;
 - c. December 22, 2015, and December 29, 2015 – inspected and reinspected, and found some wash out areas on the back of a berm, but the Site was too wet on both occasions to take corrective action;
 - d. On December, 30, 2015 - reinspected and repaired the berm washout area and stabilized it with seed and straw.
 - e. On June 2, 2016 – inspected and repaired down silt fence;
 - f. On June 16, 2016 – inspected and repaired silt fencing at three locations; and
 - g. On June 30, 2016 – inspected and repaired downed silt fence and observed some washout, but the Site was too wet for washout repair. The washout was repaired later by Perkinson.
17. On June 21, 2016, Perkinson personnel met with County staff to address the erosion and sediment control issues for the Site. Perkinson recommended certain actions be taken to address perimeter silt fence, wash-out areas, and stock pile silt fencing. The County approved such measures, which Perkinson performed in early July 2016 and for which Perkinson was paid by the County separately from the pending Phase II work contract.
18. During DEQ Site inspections on May 26, 2016 and October 25, 2016, DEQ staff documented that the SWPPP inspections were not being conducted and recorded at the minimum frequency required by the 2014 Permit. At the time of the May 26, 2016

inspection, the last SWPPP inspection was dated January 18, 2016. At the time of the October 25, 2016 inspection, the last SWPPP inspection was dated July 9, 2016.

2014 Permit Part II(F)(2)(a) states, "Inspections shall be conducted at a frequency of: (1) At least once every five business days; or (2) At least once every 10 business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted no later than the next business day."

2014 Permit Part II(F)(4) requires that "The inspection report . . . must be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated."

19. During DEQ Site inspections on May 26, 2016 and October 25, 2016, DEQ staff observed that erosion and sediment controls were not installed or maintained in accordance with the specifications in the Erosion and Sediment Control regulations, VSMP regulations, and 2014 Permit as follows:
- a. On May 26, 2016 and October 25, 2016, silt fence was not properly maintained in effective operating condition. Silt fence that is part of the perimeter controls for the stockpiles was overtopped with sediment in areas.
 - b. On May 26, 2016 and October 25, 2016, there were unstabilized areas on the Site that had been dormant for more than 14 days.

However, DEQ staff did not observe any discharges of sediment to state waters.

2014 Permit Part II(E)(1) states, "All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications."

9 VAC 25-840-40(2) of the Erosion and Sediment Control Regulations states: "During construction of the project, soil stockpiles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site."

9 VAC 25-840-60(A) of the Erosion and Sediment Control Regulations states in part: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function."

9 VAC 25-870-95(L) states: "Land disturbing activities shall comply with the Virginia Erosion and Sediment Control Law and attendant regulations."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

9 VAC 25-840-40(1) of the Erosion and Sediment Control Regulations states:
“Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days.”

20. During the DEQ Site inspection on October 25, 2016, DEQ staff documented that a copy of the notice of coverage under the general VPDES permit for discharges of stormwater from construction activities was not included in the SWPPP.

2014 Permit Part II(A)(1)(b) states: “The SWPPP shall include the following items: Upon receipt, a copy of the notice of coverage under the general VPDES permit for discharges of stormwater from construction activities (i.e., notice of coverage letter).”

21. Based on the results of the May 26, 2016 and October 25, 2016 inspections, the Board concludes that Perkinson violated 9 VAC 25-840-40(1), 9 VAC 25-840-40(2), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), 9 VAC 25-870-95(L) and the conditions of 2014 Permit Parts II(A)(1)(b), II(E)(1), II(F)(2), and II(F)(4) as described in paragraphs C(18)-(20) of this Order.
22. On November 8, 2016, DEQ issued NOV No. 2016-11-PRO for the violations described above that were documented during DEQ Site inspections on May 26, 2016 and October 25, 2016.
23. On November 27, 2016, the County funded the Phase II work, and the Phase II work was subsequently awarded to Perkinson under a separate contract.
24. On December 20, 2016, Department staff met with representatives of Perkinson and Prince George County at the Site to discuss the violations. During the December 20, 2016 meeting, DEQ staff verified that the violation described in paragraph C(19)(a) has been corrected.
25. On January 17, having just been awarded the separate contract for the Phase II work, Perkinson performed temporary stabilization over the remaining denuded areas of the Site. On January 20, 2017, Perkinson submitted pictures of the temporarily stabilized Site demonstrating that the violation described in paragraph C(19)(b) has been corrected.
26. DEQ visited the Site on January 26, 2017 and confirmed that the Site has been temporarily stabilized. During the January 26, 2017, Site visit, DEQ staff also confirmed that the notice of coverage letter has been placed in the SWPPP and SWPPP inspections are being conducted and recorded at the minimum frequency required by the 2014 Permit, correcting the violations described in paragraph C(18) and C(20).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Perkinson and Perkinson agrees to: pay a civil

charge of \$12,285.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Perkinson shall include its Federal Employer Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Perkinson shall be liable for attorneys' fees of 30% of the amount outstanding

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Perkinson for good cause shown by Perkinson, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2016-11-PRO-201 dated November 8, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Perkinson admits the jurisdictional allegations, and agrees not to contest, but does not admit, findings of fact and conclusions of law contained herein.
4. Perkinson consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Perkinson declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Perkinson to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
 8. Perkinson shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Perkinson shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Perkinson shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.
- Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
 10. This Order shall become effective upon execution by both the Director or his designee and Perkinson. Nevertheless, Perkinson agrees to be bound by any compliance date which precedes the effective date of this Order.
 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Perkinson has completed all of the requirements of the Order;

- b. Perkinson petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Perkinson.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Perkinson from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Perkinson and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Perkinson certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Perkinson to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Perkinson.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Perkinson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2017.

Jefferson D. Reynolds, Enforcement Director
Department of Environmental Quality

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Perkinson Construction LLC voluntarily agrees to the issuance of this Order.

Date:

4-19-17

By:

Terri Perkinson Vice President
(Person) (Title)

Perkinson Construction LLC

Commonwealth of Virginia

City/County of Prince George

The foregoing document was signed and acknowledged before me this 19 day of
April, 2017, by Terri Perkinson who is
Vice President of Perkinson Construction LLC on behalf of the company.

Michael B. Taylor
Notary Public

7500809

Registration No.

My commission expires: 9/30/2019

Notary seal:

